

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY	)	
AVERAGE WHOLESALE PRICE	)	MDL NO. 1456
LITIGATION	)	Civil Action No. 01-12257-PBS
	)	
THIS DOCUMENT RELATES TO	)	Hon. Patti B. Saris
ALL CLASS ACTIONS	)	Chief Mag. Judge Marianne B. Bowler
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**THE JOHNSON & JOHNSON DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT AS TO CLASS 3**

The Johnson & Johnson defendants respectfully move this Court for an order granting summary judgement with respect to class 3 and for such other and further relief as the Court deems just and appropriate. The grounds for this motion are set forth in the accompanying memorandum of law, the supporting declaration of Andrew D. Schau and the exhibits thereto, the Declaration of Eric. M. Gaier in Support of the Track 1 Defendants' Joint Motion for Summary Judgement With Respect to Class 3 dated July 14, 2006, and the following previously filed materials already in the record before this Court:

1. Declaration of John Hoffman in Support of the Johnson & Johnson Defendants' Motion for Summary Judgment as to Class 1 and Class 2 (Mar. 14, 2006), and Exhibits. 1-2, thereto.
2. Declaration of Thomas C. Hiriak in Support of the Johnson & Johnson Defendants' Motion for Summary Judgment as to Class 1 and Class 2 (Mar. 14, 2006), and Exhibits. 1-6, thereto.
3. Declaration of Andrew D. Schau in Support of the Johnson & Johnson Defendants' Motion for Summary Judgment as to Class 1 and Class 2 (Mar. 15, 2006), and Exhibits. 1-14, thereto.

4. Declaration of Jayson S. Dukes in Support of the Johnson & Johnson Defendants' Motion for Summary Judgment as to Class 1 and Class 2 (Mar. 15, 2006), and Attachments 1-3 and Exhibits 1-24, thereto.
5. Declaration of Jayson S. Dukes in Support of the Johnson & Johnson Defendants' Motion for Summary Judgment as to Class 1 and Class 2 (Corrected) (May 8, 2006), and Attachments 1-3 and Exhibits 1-24, thereto.
6. Declaration of Eric M. Gaier, Ph.D. in Support of the Track 1 Defendants' Joint Motion for Summary Judgment (Mar. 15, 2006), and Appendix A, B, C and D, thereto.
7. The Johnson & Johnson Defendants' Local Rule 56.1 Statement in Support of Their Motion for Summary Judgment as to Class 1 and Class 2 (Mar. 15, 2006).
8. The Johnson & Johnson Defendants' Memorandum in Support Of Their Motions for Summary Judgment as to Class 1 and Class 2 (Mar. 15, 2006).
9. Memorandum of Law In Support Of Track 1 Defendants' Joint Motion for Summary Judgment (Mar. 15, 2006)
10. Declaration of Lucy Fowler [in Support of Track 1 Defendants' Motion for Summary Judgment and the accompanying Rule 56.1 Statement of Undisputed Material Facts in Support of Track 1 Defendants' Motion for Summary Judgment] (Mar. 15, 2006), and Exhibits 1-89, thereto.
11. Rule 56.1 Statement of Undisputed Material Facts in Support of Track 1 Defendants' Motion for Summary Judgment (Mar. 15, 2006)
12. Reply Declaration of Andrew D. Schau in Support of the Johnson & Johnson Defendants' Motion for Summary Judgment and in Opposition to Plaintiffs' Request for Additional Discovery Pursuant to Rule 56(f) (Apr. 28, 2006), and Exhibits A-D, thereto.
13. Reply Declaration of Jessica V. Barnett in Support of the Reply Memorandum of Law in Further Support of Track 1 Defendants' Joint Motion for Summary Judgment (Apr. 28, 2006), and Exhibits 1-6, thereto.
14. The Johnson & Johnson Defendants' Reply Memorandum In Support Of Their Motions For Summary Judgment As To Class 1 and Class 2 (Apr. 28, 2006)
15. Reply Memorandum of Law In Support Of Track 1 Defendants' Joint Motion For Summary Judgment (Apr. 28, 2006)

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d) the undersigned counsel hereby request oral argument on the issues set forth in this motion and the accompanying memorandum of law and declarations.

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel hereby certify that counsel for the Johnson & Johnson defendants conferred with counsel for plaintiffs regarding the issues addressed in this motion, but were unable to resolve or further narrow the issues.

Respectfully submitted,

Dated: July 14, 2006

/s/ William F. Cavanaugh, Jr.

William F. Cavanaugh, Jr.

Andrew D. Schau

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Adeel A. Mangi

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**CERTIFICATE OF SERVICE**

I certify that on July 14, 2006, a true and correct copy of THE JOHNSON & JOHNSON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AS TO CLASS 3 was served on all counsel of record via LexisNexis File & Serve.

/s/ Andrew D. Schau  
Andrew D. Schau

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